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DEPARTMENT FOR AF/W (JHUNTER), S/WCI (JBROUSSARD/MSHIN)
USUN FOR LPHAM

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TAGS: [KAWC](#) [KJUS](#) [PHUM](#) [PINR](#) [SL](#)

SUBJECT: FILLING THE VOID IN THE SCSL APPEALS CHAMBER

Classified By: Ambassador June Carter Perry for reasons 1.4 (b/d)

¶1. (C) Summary: Poloff met with a highly-placed source within the Special Court for Sierra Leone (SCSL) on November 25 to discuss the implications of Justice Raja Fernando's death on the Appeals Chamber. Source commented that, beyond the legal issues themselves, members of the Chamber select the Court's President. This position greatly impacts Court management and ability to adhere to the Completion Strategy timeline. The individual selected to assume Fernando's seat will need to have a strong understanding of the importance of bringing the SCSL's work to a close. This represents an opportunity for the U.S. to advocate for an American to fill this important position and to address the historic resistance to Americans in UN positions, especially in the SCSL, where our contribution to date is \$60 million. End Summary.

IMPORTANCE OF APPEALS CHAMBERS JUDGES

¶2. (C) The importance of the Appeals Chambers judges should not be under-stated. According to Rule 18A of the SCSL Rules of Procedure and Evidence, only these judges elect the President. The powers of the President, as articulated in Rule 19, are extensive. Of note is Rule 19(A), which states the President will "...co-ordinate the work of the Chambers and supervise the activities of the Registry..." Rule 19(C), of particular importance to the Completion Strategy, states that "...the President shall take all appropriate measures aimed at furthering the conduct of fair, impartial and expeditious trials and appeals." The Presidential selection is thus significant to USG objectives related to completion.

POTENTIAL OPENING FOR U.S. JUSTICE

¶3. (C) Source stated his opinion that this represents an opportunity for an American judge to sit on the SCSL bench. It is also an opportunity to strive for greater gender balance in Chambers (Note: Of the five Appeals justices, one is a woman. End Note.). He referred several times to the overall need for balance in Chambers, especially in the areas of gender and citizenship. There is the perception that the Appeals Chamber includes several justices with a strong bias towards the accused based on their shared African heritage (Note: Source believes that this bias does exist, based on legal decisions made and his interaction with the justices themselves. End Note.). Accordingly, Source sees a need to counter-balance the bias, perceived or real, by selecting a judge from another region.

HOW THE PROCESS WORKS

¶4. (C) The agreement between the UN and the Government of Sierra Leone (GoSL) establishing the SCSL states that the Secretary-General is responsible for appointing three judges to the Appeals Chamber, while the GoSL appoints two. Both stakeholders must consult with the other prior to making final decisions. The responsibility of replacing Fernando, a UN selection, is therefore the concern of the Secretary-General. According to information provided to Poloff, the UN's Office of Legal Affairs will send out an invitation to Member States this week requesting nominations within 30 days. The interview process is scheduled for early January.

COMMENT

¶5. (C) The issues raised by this source are echoed by others. With the likely departure of Justice Boutet from Trial Chamber I in January due to illness, Chambers as a whole will lack a North American representative. Justice Fernando will be missed by many in the SCSL community, and replacing him with someone who brings similar qualities and characteristics to the table, such as a "level-head" and relatively unbiased, liberal viewpoint, is necessary. An American in the Appeals Chamber could be a strong ally in the ongoing battle to keep the Court moving towards a timely completion of its mission. As sad and untimely as Fernando's death is, it represents an opportunity for the USG and other members of the Management Committee to weigh-in on a suitable replacement. In addition, the U.S., despite being a major funder to the UN (and with \$60 million in the SCSL), has historically had difficulties placing Americans in UN positions. We believe the SCSL situation could be a positive one for us. End Comment.

PERRY